

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID KLINE,

Plaintiff,

v.

CONAGRA FOODS, INC.,

Defendant.

CIVIL ACTION NO. 3:08-CV-1621

(JUDGE CAPUTO)

MEMORANDUM ORDER

The Plaintiff's Motion to Dismiss Complaint Without Prejudice (Doc. 20) pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure is addressed to the sound discretion of the Court. *U.S. v. Outboard Marine Corp.*, 789 F.2d 497, 502 (7th Cir. 1986). In the exercise of discretion, undue prejudice should not be visited upon the defendant. Here, the Plaintiff's reasons for dismissal appear sound. The defense has filed a motion for summary judgment (Doc. 15) and incurred expense attendant thereto. However, weighing this argument, the diligence exercised by Plaintiff in attempting to determine the identity of the alleged negligent vehicle, and the potential prejudice to Plaintiff, I conclude the prejudice to the Defendant is not undue.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Plaintiff's Motion to Dismiss Complaint Without Prejudice (Doc. 20) is granted, and this case is dismissed, without prejudice. Moreover, the Defendant's Motion for Summary Judgment (Doc. 15) is denied as moot.

Date: March 10, 2009



A. Richard Caputo
United States District Judge